

**APPROVED MINTUES\***  
**SUNNYVALE REDEVELOPMENT AGENCY**  
**NOVEMBER 18, 2008**

**ROLL CALL**

**PRESENT:**

Agency Chair Anthony Spitaleri  
Agency Member John Howe  
Agency Member Otto Lee  
Agency Member Ron Swegles  
Agency Member Christopher Moylan  
Agency Member David Whittum

**ABSENT:**

Agency Vice Chair Melinda Hamilton (excused)

**STAFF PRESENT:**

Agency Executive Director Amy Chan  
Assistant City Manager Robert Walker  
Agency Counsel David Kahn  
Agency Secretary and Director of Redevelopment Hanson Hom  
Agency Clerk Gail Borkowski

**PUBLIC ANNOUNCEMENTS**

None.

**CONSENT CALENDAR**

Agency Member Howe moved and Agency Member Moylan seconded to approve the Consent Calendar.

Agency Member Swegles stated that he was not present at the September 30, 2008 Redevelopment Meeting; therefore, he will abstain from voting on this item.

VOTE: 5-0 (Agency Member Swegles abstained and Agency Vice Chair Hamilton absent)

**RDA 1.A. Approval of Draft Minutes of Regular Meeting of September 30, 2008**

**STAFF RESPONSES TO PRIOR PUBLIC COMMENTS**

None.

**PUBLIC COMMENTS**

None.

*\*Approved by the RDA Board as submitted 6/23/09*

**PUBLIC HEARINGS/GENERAL BUSINESS**

2.       **RESOLUTION     First Amendment to Amended and Restated Disposition and  
RDA 08-005       Development and Owner Participation Agreement for Town  
Center Property (Modifications to Minimum Project TIF Date,  
Residential Ownership Requirements, Retail Leasing  
Milestones)  
Information Only Report On Compliance with Underground  
Parking Requirement and Block 6 Fifth Level Parking**

Agency Executive Director Amy Chan presented the staff report.

Agency Member Howe verified with Agency Counsel David Kahn that a general provision contained in the Disposition and Development and Owner Participation Agreement (DDOPA) refers to circumstances that are beyond the control of the developer, but does not specifically refer to an economic situation, such as the current situation. Agency Counsel Kahn explained that the developer could advance the provision as an excuse for the penalties not becoming due; however, the Agency would not have to accept that as an acceptable provision. Agency Member Howe verified with Agency Counsel Kahn that current economic conditions could be an issue.

Agency Member Howe inquired whether any discussion had occurred with the developer concerning placing a requirement into the Covenants, Conditions and Restrictions (CC&R's) stating that a certain percentage of the units be maintained as owner occupied. Agency Executive Director Chan explained that currently of the 198 units, 148 are going into a separate building, which is planned for being a rental situation for up to five years. The developer's plan is to have the remaining 50 units as owner occupied. Agency Member Howe explained that the concern is about someone purchasing a unit and then turning it into a rental.

Agency Member Whittum verified with Agency Counsel Kahn that the developer could complete milestone 4(b)(2) without completing milestone 4(b)(1) first. Agency Member Whittum stated that it appears liquidated damages would not be due if milestone 4(a) and 4(b)(1) were ignored, as long as everything was completed by March 31, 2010. Agency Counsel Kahn responded that liquidated damages would start to accrue and need to be paid 60 days after each milestone; however, if at the end of the period each milestone was met, then the liquidated damages that were due would be refunded.

Public hearing opened at 12:48 a.m.

Peter Pau, applicant, stated the partnership with the City has worked out well. Pau asked that Council consider the amendments to the development agreement in order to allow for flexibility due to the poor financial situation with the economy. Pau explained that the amendments are a protection for them; but they have not stopped working on the project and they are moving ahead as planned. Pau stated if the economy worsens and they were to consider stopping, they would notify the Agency prior to that action. Pau stated they are requesting that Council allow them some leeway.

Agency Member Howe verified with Kelly Snider, representative for Sand Hill Properties, that a first draft of the building CC&R's has been completed and that the City has a copy of those. Currently, they are in the process of drafting the individual condominium CC&R's and intend to have requirements for ownership. Snider cautioned Council that it is ultimately the homeowners association's responsibility to enforce the CC&R's; however, they are not always able to achieve 100 percent compliance. Snider explained that the hard work to stress home ownership comes during the time that the units are being sold, because once title has been transferred, it is difficult to take property away.

Agency Member Howe explained that he previously offered Sand Hill Properties several examples of how to enforce home ownership through economic incentives. Agency Member Howe requested Snider look over the previous examples he brought forward that provided economic incentives that have been successful and have held up in the courts and then for Snider to bring those forward in the future.

Agency Member Swegles inquired if the units will be individually metered, including water meters. Snider stated the project has a central plant which provides the heating and cooling, so some of the utilities brought into the condo project will not allow for individual meters; however, water will be individually metered.

MOTION: Agency Member Howe moved and Agency Member Swegles seconded to approve Alternatives 1 and 2:

Alternative 1: Agency adopts resolution authorizing the First Amendment to the Amended and Restated Disposition and Development and Owner Participation Agreement with Downtown Sunnyvale Mixed Use LLC (RREEF and Sand Hill Property Company) to:

- 1) Modify the definition of the "Minimum Project TIF Date" to require 198 residential units instead of 200;
- 2) Allow up to 148 rental units for a maximum of five years subject to specified conditions to insure conversion to ownership housing; and
- 3) Amend Milestone 4 to Milestone 4(a) completion of retail shell space (except for building skin and storefront framing) for Minimum Project by March 30, 2009, 4(b)(1) commencement of delivery of 110,000 square feet of retail shell space to retail tenants by December 31, 2009, and 4(b)(2) delivery of an additional 40,000 square feet of retail shell space by March 31, 2010.

Alternative 2: Agency accepts Information Only report on underground parking count.

Agency Member Howe stated the downtown project has been a long process with a number of developers; however, Pau has met all of the requirements as scheduled. Agency Member Howe stated a serious financial hardship has hit this country and it warrants allowing this developer some latitude, not that he will use it, but at least have the opportunity to have some leeway if needed.

Agency Member Moylan stated he is not opposed to the minor modification to the housing units; however, he is opposed to the other amendments. Agency Member Moylan stated liquidated damages is intended to have any financial loss, from the delay of the project, shared by all parties. Should the City not enforce the liquidated damages, that would place the burden of the bad economy on the City and that does not seem appropriate.

Agency Member Lee acknowledged that the developer has been extremely diligent in meeting or exceeding the deadlines up to this point. Agency Member Lee stated that the City would not be the only entity taking the financial burden of a delay. Agency Member Lee stated that the current global financial situation was unforeseeable and building a shell without tenants does not make sense. Agency Member Lee stated that if the developer has to delay the project, they will also suffer financially as they will not see a return on their investment as soon as they planned. Agency Member Lee stated that he supports approving these amendments and working together with the developer in order to allow the Downtown to be a successful project at the time when it is ready to open.

Agency Member Whittum stated he approves of the modifications to the housing; however, he would like the project to be as confined as possible.

VOTE: 4-2 (Agency Members Moylan, Whittum dissented and Agency Vice Chair Hamilton absent)

#### **ADJOURNMENT**

Agency Chair Spitaleri adjourned the Redevelopment Agency Meeting at 1:04 a.m.

Kathleen Franco Simmons  
Agency Clerk

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Date